No. 86-1713

In the Supreme Court of the United States

OCTOBER TERM, 1986

JAMES CAPORALE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the jurors harbored an ethnic bias against Italian-Americans that deprived petitioners of a fair trial.

2. Whether forfeiture orders were properly entered against petitioners Tricario, Giardiello, and Rubin and co-defendant Seymour Gopman for the $1,254,964.80 in kick-back payments that were made for their use and benefit.

3. Whether petitioners Tricario, Giardiello, and Rubin were misled into waiving their right to a jury trial on the forfeiture order.

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OPINION BELOW

The opinion of the court of appeals is reported at 806 F.2d 1487.[1]

JURISDICTION

The judgment of the court of appeals (Pet. App. 1-2) was entered on December 31, 1986. A petition for rehearing was denied on February 24, 1987 (Pet. App. 3-4). The petition for a writ of certiorari was filed on April 22, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1]The opinion is not reproduced in the appendix to the petition in this case but is reproduced in the appendix to the petition filed by petitioners' co-defendant Seymour Gopman (No. 86-6576).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioners were convicted of conspiring to violate the federal racketeering statute, 18 U.S.C. 1962(d).[2] Petitioners were sentenced as follows: James Caporale to 12 years' imprisonment; Alfred Pilotto to 20 years' imprisonment; Bernard Rubin to eight years' imprisonment, to run concurrently with the sentence he was serving in another case; George Wuagneux to seven years' imprisonment, to run concurrently with the sentence he was serving in another case; Salvatore Tricario to 12 years' imprisonment; Louis C. Ostrer to seven years' imprisonment, to run concurrently with the sentence he was serving in another case; and John Giardiello to 12 years' imprisonment. Additionally, the court ordered petitioners Tricario, Giardiello, and Rubin and co-defendant Seymour Gopman to forfeit the $1,254,964.80 that had been paid, during the course of the conspiracy, to various corporations that they owned or controlled. The court also ordered the forfeiture of petitioner Pilotto's interest in the $595,701.90 that was paid, at his direction, to a company owned by his son-in-law.

The evidence at trial, the sufficiency of which is not in dispute, showed that petitioners and their co-defendants, all of whom were officers of or otherwise associated with the Laborers International Union of North America, conspired to obtain kickbacks from companies that provided health and welfare benefits to members of that Union. Representatives of the companies agreed to pay the kickbacks in return

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[2]The indictment also charged nine other defendants with racketeering conspiracy. Co-defendant Seymour Gopman was convicted along with petitioners and has filed a separate petition for certiorari (No. 86-6576). Five co-defendants (Paul A. DiFranco, Paul Fosco, James F. Norton, James Pinckard, and Santo Trafficante) were severed before trial. Three co-defendants (Anthony Accardo, Terence O'Sullivan, and Angelo Fosco) were acquitted.

for assistance in obtaining contracts to provide insurance and health services to Union members. Between 1970 and 1977, petitioners and their co-defendants received more than $2,000,000 in kickbacks as a result of the scheme.

1. a. The one-count indictment sought forfeiture against all of the defendants and asserted that they were all jointly and severally liable for the entire sum that was subject to forfeiture (1 R. 18; 806 F.2d at 1506).[3] Before the return of the verdict, the court asked whether the defendants wished to submit the forfeiture issue to the jury or have it decided by the court (Tr. 7698-7702). Counsel for defendant Accardo argued that the court should not consider holding all the defendants jointly and severally liable for the entire $2,000,000 forfeiture, and indicated that, if the court was prepared to consider a forfeiture on the theory set out in the indictment, he would not waive a jury trial on the issue (Tr. 7700). Counsel for petitioners Caporale and Pilotto took the same position (Tr. 7702, 7706; 806 F.2d at 1506 n.24). Counsel for petitioner Giardiello and co-defendant Gopman, however, agreed to waive a jury trial regardless of the court's decision as to the issue of joint and several liability (Tr. 7703, 7705; 806 F.2d at 1506). Petitioners Tricario and Rubin did not state their positions on the question of waiver at that time.

Several days later, the court announced that it did not accept the government's theory regarding joint and several liability (Tr. 7908; 806 F.2d at 1506). Petitioners Tricario and Rubin then waived their right to a jury trial on the forfeiture issue and consented to have the question decided by the court (Tr. 7913, 8026; 806 F.2d at 1506). Neither of them stated or in any way implied that his waiver was

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[3] "R." refers to the Record on Appeal in the court of appeals. Volumes 15 and 16 of the Record on Appeal are separately paginated and were filed in Docket Number 85-5670 in the court of appeals.

conditioned on the court's ruling on the issue of joint and several liability.

At the subsequent hearing on the forfeiture question, the prosecutor argued that, in light of the evidence that Gopman, Rubin, Tricario, and Giardiello were joint owners and beneficiaries of the payments to four of the corporations involved, they should be jointly and severally liable for the forfeiture attributable to payments to those corporations (70 R. 8). The court then inquired whether the government had not abandoned the theory of joint and several liability at trial (*ibid.*). The prosecutor explained that the government had abandoned the theory that all of the conspirators were jointly and severally liable for all of the money forfeitures, but that it had not abandoned the narrower claim that the four defendants who jointly received the kickback payments in question should be jointly and severally liable for the total amount of those payments (*id.* at 8-9).

Petitioners did not dispute the prosecutor's understanding of the restriction on the government's theory of joint and several liability. Nor did petitioners suggest at that time or later that their waiver of a jury trial on the forfeiture issue had been conditioned on the understanding that the court would not impose joint and several liability in its forfeiture order under any circumstances. 806 F.2d at 1506. The court proceeded to impose forfeiture on the narrow joint and several liability theory advanced by the government at the hearing. In a comprehensive opinion (Pet. App. 9-20), the court considered and rejected all of petitioners' arguments against the availability of joint and several liability for forfeiture in a racketeering conspiracy case.

b. Several weeks after the trial ended, reports were published in the press stating that the government was conducting an investigation into an allegation of jury tampering in this case. Relying on those news reports, petitioners moved

for a new trial and made requests for various forms of other relief (9 R. 2322, 2327, 2329, 2505-2516; 10 R. 2734, 2746, 2770; 11 R. 2801; 12 R. 3175; 13 R. 3444). The district court denied the motions for a new trial and for other relief. On appeal, petitioners argued that the district court improperly ignored evidence of jury tampering and that the court should have held a hearing on that matter. Petitioners sought a remand to the district court for it to consider the issue. The government did not oppose a remand for that purpose, and the court of appeals remanded the case (Pet. App. 5-6).

On remand, the district court held an extensive evidentiary hearing, during which testimony was elicited from 17 of the 18 regular and alternate jurors (Pet. App. 7 & n.1). Following the hearing, the district court entered an order denying the motions for a new trial (*id.* at 7-8). The evidence developed at the hearing focused on certain statements made during the trial by juror John Curtice to other members of the jury.[4] Curtice testified that, when joking with the other jurors, he had claimed to have relatives in Chicago, and he had said that he called every day to Chicago, to "keep up on everything" (15 R. 81-82; 806 F.2d at 1502).[5] Curtice also testified that he may have said, in jest, that he had a friend or relative in the Mafia in Chicago. At one point in the trial, he testified, he might have said, "I belong to the underworld and I go and shoot people for a living" (15 R. 84-85). He explained that those comments were made either jokingly or sarcastically, and that they were so implausible that he did not expect any of the jurors

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[4]Those remarks were made during the course of an eight-week trial and an additional month of deliberations.

[5]The court of appeals specifically noted that "the record does not reflect that [petitioners] ever established that the phone calls actually took place" (806 F.2d at 1503).

to take them seriously. Curtice also testified that the jurors occasionally would joke about some of the defendants "look[ing] like * * * typical underworld" figures (*id.* at 87-88; 806 F.2d at 1504).

Most of the other jurors did not recall ever hearing Curtice say anything about having family members in Chicago or being in any way connected to underworld figures there. Of the five jurors who did recall such comments by Curtice, four testified that they did not take Curtice's comments seriously, since he appeared to be joking when he made the comments (15 R. 18-21, 24, 28, 39, 44, 51, 57, 63 (juror Schwartz); *id.* at 104-105, 108-109 (juror Swanko); 16 R. 79-80, 82 (juror Sickler); *id.* at 123-124, 127 (juror Davis); 806 F.2d at 1503). The fifth juror, Smith, said that Curtice's comments about his relatives in Chicago "did not seem to make much difference to us" (16 R. 53). Two of the five jurors—Schwartz and Swanko—said that they recalled Curtice saying that he was getting telephone calls from Chicago and that some of the defendants had to be sacrificed at the expense of others.[6] Schwartz, however, said that she did not take Curtice seriously and did not believe that he was getting any such calls (15 R. 44, 47, 51). Swanko said that Curtice's references to the "Mafia" were made in a joking context (*id.* at 103-105; 806 F.2d at 1503).

The district court ruled that the defendants had failed to demonstrate by a preponderance of credible evidence that any extrinsic matter had tainted the jury's deliberations (Pet. App. 8). The bribery allegation, the court found, "amounts to nothing more than a rumor with no basis in fact" (*ibid.*). With regard to the "few inappropriate remarks" made by juror Curtice, the court found that the testimony at the remand hearing made it clear that those remarks "were

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[6]Curtice denied that he had ever made such remarks, even in jest (15 R. 86).

perceived for the most part by the other jurors as having been made in jest," and that the remarks "had absolutely no influence upon the jurors in their deliberations" (*ibid.*).

2. The court of appeals affirmed. The court held that the district court had properly imposed joint and several liability on Tricario, Giardiello, Rubin, and Gopman for the $1,254,964.80 that they had received in kickback payments. The court rejected petitioners' claims that the racketeering forfeiture provision, 18 U.S.C. (Supp. III) 1963(a)(1), excludes joint and several liability, and that such liability for a forfeiture is inconsistent with traditional concepts of criminal law and individual responsibility. 806 F.2d at 1506-1509. The court also held that joint and several liability is consistent with the overall design of the racketeering statute " 'to remove the profit from organized crime by separating the racketeer from his dishonest gains.' " *Id.* at 1507 (quoting *Russello* v. *United States*, 464 U.S. 16, 27-28 (1983)). The court likewise rejected petitioners' argument that forfeiture could be ordered only in connection with a substantive racketeering offense but not in connection with a conspiracy conviction. 806 F.2d at 1509.

With regard to petitioners' claim of jury bias, the court held that, despite the joking among the jurors about Italians and the Mafia, the verdicts were not based on ethnic bias. Most of the joking, the court found, had taken place on lunch and coffee breaks rather than during deliberations. Moreover, the court noted that most of the "joking around" on the subject of ethnic origin consisted of kidding of juror Curtice by some of the other jurors about being Italian-American, "usually as part of an exchange with him about his claim to have cousins in Chicago and his Mafioso connections" (806 F.2d at 1504, 1505); the joking was not directed at the defendants. Finally, the court pointed out that the jury had deliberated three full weeks before arriving at its verdict and had acquitted some of the defendants,

including some Italian-American defendants (*id.* at 1504-1505). Thus, while the court concluded that the joking among the jury members was inappropriate, the record "does not indicate that any of the jurors prejudged the guilt or innocence of any of the defendants as the result of ethnic bias" (*id.* at 1505).

ARGUMENT

1. Petitioners first contend (Pet. 8-15) that the ethnic remarks made by members of the jury evinced a predisposition toward guilt that deprived them of a fair trial.

Juror misconduct is not a basis for overturning a verdict unless it resulted in prejudice to the defendant. In this case, the trial court heard testimony from all but one of the jurors (whose deposition petitioners took but chose not to rely on) and found it "clear from their testimony that [any inappropriate] remarks had absolutely no influence upon the jurors in their deliberations" (Pet. App. 8). The court of appeals reviewed the record and affirmed that factual determination (806 F.2d at 1503). Petitioners offer no good reason why this Court should grant certiorari in order to reexamine the record on that issue.[7]

The record amply supports the factual determination made by the district court and affirmed by the court of appeals. As noted above, the record demonstrates that the ethnic remarks that were made were not taken seriously. As the court of appeals observed (806 F.2d at 1505), most of the joking was directed at juror Curtice, rather than at the

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[7]Petitioners argue that prejudice can be presumed in this case by claiming (Pet. 14-15) that the ethnic remarks made by the jurors constituted "extrinsic contact" with the jurors. Comments among jurors themselves, however, do not constitute the sort of communication with an outside source regarding the defendant's case that is deemed presumptively prejudicial. See *Remmer* v. *United States*, 347 U.S. 227, 229 (1954); *United States* v. *Webster*, 750 F.2d 307, 338-339 (5th Cir. 1984), cert. denied, 471 U.S. 1106 (1985).

defendants. In addition, the jury, following three weeks of deliberation, acquitted several of the defendants, including some Italian-American defendants. That result refutes petitioners' claim that the jury was so permeated with ethnic bias against Italian-Americans that it was incapable of reaching an impartial verdict based on the evidence.[8]

Petitioners contend (Pet. 10-14) that the decision of the court of appeals conflicts with the court's decision in *United States* v. *Heller*, 785 F.2d 1524 (11th Cir. 1986). That claim of an intracircuit conflict is for the court of appeals, not this Court, to resolve. *Wisniewski* v. *United States*, 353 U.S. 901 (1957). In any event, the decision of the court of appeals

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[8]Petitioners claim (Pet. 6-7) that the jurors entertained a preconceived notion that all the defendants were Mafia members, and suggest that that belief was the result of improper and prejudicial ethnic slurs made by Curtice and other jurors. As the testimony of juror Swanko indicates, however, any juror feeling about petitioners' possible Mafia ties sprang from questions asked of the jurors during voir dire (15 R. 108):

[DEFENSE COUNSEL]:	Was there any reference to all of these defendants who were probably members of the Mafia?
[JUROR SWANKO]:	Probably somehow connected, yes.
[DEFENSE COUNSEL]:	Was that from Mr. Curtice?
[JUROR SWANKO]:	No, not especially.
[DEFENSE COUNSEL]:	Who was it from, was that from if not Mr. Curtice?
[JUROR SWANKO]:	I think we just felt it.
[DEFENSE COUNSEL]:	Was it said by anybody?
[JUROR SWANKO]:	No. I think it was during the beginning during our questioning when asked about Italian names and how we felt about it.

is not in conflict with *Heller*.[9] There, several jurors had commented on the testimony during the course of the trial; they had made numerous blatantly anti-Semitic and racial slurs in the presence of the entire jury; they had stated a predisposition to "hang" the Jewish defendant; and one of the jurors had independently consulted an accountant about issues pertaining to the trial and had reported the results to the jury. The court of appeals reversed the conviction on three grounds: (1) that the obvious bigotry displayed by the jury denied the defendant a fair trial (785 F.2d at 1527-1528 (bigotry here was "so shocking to the conscience and potentially so damaging to public confidence in the equity of our system of justice, that we must act decisively to correct any possible harmful effects on this appellant")); (2) that several jurors had entertained a presumption of guilt at the beginning of the trial; and (3) that the jury had received extrinsic evidence concerning a material issue in the case (*id.* at 1528).

Nothing similar occurred in petitioners' case. Not only was there no resort to extrinsic evidence, but there was nothing resembling the pervasive misconduct that tainted the jury in *Heller*. Moreover, there was nothing in this case to suggest that the jury was biased against the defendant. In short, the factual finding by the courts below that the jurors did not "prejudge[] the guilt or innocence of any of the defendants as the result of ethnic bias" (806 F.2d at 1505) is fully supported by the record and does not warrant further review.

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[9]Indeed, the Eleventh Circuit, having recently decided *Heller*, could reasonably be expected to be as sensitive as any court to legitimate claims that ethnic bias tainted jury deliberations. It is therefore particularly significant that no judge of the court of appeals voted to grant rehearing en banc in this case (Pet. App. 4).

2. Petitioners Tricario, Giardiello, and Rubin claim (Pet. 14-22) that the district court improperly held them and co-defendant Gopman jointly and severally liable for the forfeiture of the $1,254,964.80 in kickback payments that had been made during the course of the conspiracy. As the court of appeals held, however, "imposition of joint and several liability in a forfeiture order upon RICO co-conspirators is not only permissible but necessary in these circumstances to effectuate the purpose of the forfeiture provision" (806 F.2d at 1506).

The forfeiture provision of the racketeering statute, 18 U.S.C. (Supp. III) 1963(a)(1), requires forfeiture of "any interest * * * acquired * * * in violation of section 1962." As both courts below expressly found, the kickback payments totaling $1,254,964.80 were paid to the four corporations owned and operated by Tricario, Giardiello, Rubin, and Gopman for the use and benefit of those four defendants. Thus, in the language of the racketeering statute, that sum was an "interest" that the four defendants jointly acquired in violation of Section 1962. Accordingly, because the government was unable to prove how the kickbacks had been allocated among the four defendants, it was entirely appropriate for the court to make the forfeiture order for the entire sum applicable to each defendant.

The concept of joint liability is not, as petitioners suggest, foreign to traditional principles of criminal law and individual responsibility. Rather, as the court of appeals noted (806 F.2d at 1508), the criminal law recognizes vicarious liability in certain circumstances. For example, it has long been the rule that a co-conspirator can be punished for a substantive offense committed by one of his co-conspirators, so long as the offense is reasonably foreseeable and is committed in the course of the conspiracy. *Pinkerton* v. *United States*, 328 U.S. 640, 647 (1946); *United States* v. *Michel*, 588 F.2d 986, 999 (5th Cir.), cert. denied, 444 U.S.

825 (1979). And, as the court of appeals further noted (806 F.2d at 1508), "[t]he imposition of joint and several liability on a forfeiture is even less theoretically problematic than vicarious liability for a substantive conviction might be because it goes only to the penalty imposed rather than to the individual's criminal liability."

Moreover, despite petitioners' argument to the contrary (Pet. 18-19), the imposition of joint and several liability in circumstances such as these advances the express purpose of the racketeering statute. That statute was "intended to provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots." *Russello* v. *United States*, 464 U.S. 16, 26 (1983). Recognizing that the ability to reach racketeering profits was vital to a successful attack on organized crime, Congress fashioned the forfeiture provision of the racketeering statute so as to reach those profits. *United States* v. *Navarro-Ordas*, 770 F.2d 959, 970 (11th Cir. 1985), cert. denied, No. 85-1086 (Feb. 24, 1986). Thus, the forfeiture provision seeks not only to punish but also "to remove the profit from organized crime by separating the racketeer from his dishonest gains." *Russello* v. *United States*, 464 U.S. at 27-28.

If the government were required to determine the precise allocation of the proceeds of racketeering among offenders before forfeiture could be ordered, the effectiveness of the forfeiture remedy would be substantially impaired. Offenders could escape the forfeiture of huge profits that they had amassed in violation of the racketeering statute by simply masking the allocation of the proceeds among them. Cf. *United States* v. *Cauble*, 706 F.2d 1322, 1346-1347 (5th Cir. 1983), cert. denied, 465 U.S. 1005 (1984). The court of appeals correctly concluded (806 F.2d at 1508): "If the government can prove the amount of the proceeds and identify a finite group of people receiving the proceeds, it defeats the purpose of the provision to hold that the

proceeds cannot be forfeited because the government cannot prove exactly which defendant received how much of the pot."

Nor is there substance in petitioners' claim (Pet. 17-18) that forfeiture can only be ordered in connection with a substantive racketeering offense, 18 U.S.C. 1962(c), and not in connection with a violation of the racketeering conspiracy provision, 18 U.S.C. 1962(d). The penalty provision of the racketeering statute, Section 1963(a), sets out the penalties that can be imposed under the statute; these penalties include imprisonment, fines, and forfeiture. By the terms of the statute, each of these penalties is applicable to a violation of "any provision of section 1962" (18 U.S.C. (Supp. III) 1963(a)). There is no basis in the plain statutory language for the contention that the statute's broad language should be read to exclude forfeiture from applying to violations of one of the four provisions of Section 1962—the racketeering conspiracy provision.

Petitioners' argument, in essence, is that, because the conspiracy provision does not require the actual commission of any racketeering act, no "interests" can be "acquired or maintained in violation of" that provision. That argument overlooks the fact that "interests" can be unlawfully obtained in a course of illegal conduct, whether that conduct is prosecuted under the racketeering conspiracy provision or under the substantive provision. It is possible, of course, for defendants to be convicted of racketeering conspiracy without having obtained any forfeitable interests. But it is certainly not the case that defendants who are charged and convicted of racketeering conspiracy never obtain interests that are potentially subject to forfeiture under Section 1963(a). Here, as the court of appeals expressly found, the racketeering conspiracy entered into by petitioners yielded more than $2,000,000 in proceeds. "Given that the purpose behind the forfeiture provision is to separate the illegal activity from the profits that activity

generated, forfeiting proceeds from conspiracies that, in fact, yield proceeds would clearly further that goal." 806 F.2d at 1509.[10]

3. Petitioners Tricario, Rubin, and Pilotto also argue (Pet. 22-23) that they were denied their right to a jury trial on the forfeiture count because they waived that right in reliance on the district court's ruling that it would not impose joint and several liability on the forfeiture issues.[11]

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[10]Petitioners also argue (Pet. 20-21) that the forfeiture order constituted cruel and unusual punishment, in violation of the Eighth Amendment. The court of appeals declined to consider this claim, finding that it had been raised for the first time on appeal (806 F.2d at 1507 n.26). In any event, several courts have upheld the Section 1963 forfeiture provisions against an Eighth Amendment challenge, holding that forfeitures are permissible as long as they bear some reasonable relationship to the defendant's conduct. See *United States* v. *Tunnell*, 667 F.2d 1182, 1188 (5th Cir. 1982); *United States* v. *Grande*, 620 F.2d 1026, 1039 (4th Cir.), cert. denied, 449 U.S. 830 (1980); *United States* v. *Huber*, 603 F.2d 387 (2d Cir. 1979), cert. denied, 445 U.S. 927 (1980); *United States* v. *Thevis*, 474 F. Supp. 134, 141 (N.D. Ga. 1979), aff'd, 665 F.2d 616 (5th Cir.), cert. denied, 458 U.S. 1109 (1982). By their conduct, petitioners helped cause a loss to the members of the Laborers Union in the millions of dollars. The forfeiture directed against them is therefore not disproportionate to the magnitude of their offense.

Petitioners also contend (Pet. 21-22) that, in imposing forfeiture on the basis of joint and several liability, the trial court improperly delegated its judicial power to the Executive Branch in contravention of Article III of the Constitution. Petitioners did not assert this claim before the court of appeals, however, and they therefore may not raise it here. See, *e.g.*, *Berkemer* v. *McCarty*, 468 U.S. 420, 443 (1984); *United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977); *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970). In any event, the argument is wholly without merit. The court, exercising Article III powers, renders judgment; the Executive Branch merely decides, as is ordinarily the case, how to execute the judgment.

[11]Petitioner Pilotto complains (Pet. 24) that the court of appeals was factually incorrect in stating (806 F.2d at 1506 n.24) that he did not raise this issue on appeal. However, on appeal Pilotto argued that he had been denied his right to a jury trial because, despite its assurance that it would not base any forfeiture order on a theory of joint or several, or

The record, however, does not support that claim. As the court of appeals determined (806 F.2d at 1506), the only representation by the trial court on which petitioners might have relied was that the court would not impose joint and several liability against all defendants for all the proceeds of the scheme. When the court indicated that it was prepared to consider the government's narrower theory of joint and several liability, petitioners did not indicate that they understood the court to be acting inconsistently with any earlier representations on which they had relied; rather, the first reference of any kind to the "conditional waiver" argument was made on appeal. In these circumstances, as the court of appeals held (*ibid.*), the district court did not mislead petitioners in any way into waiving their right to a jury trial on the forfeiture issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1987

"vicarious," liability, the district court ordered the forfeiture of his interest in the $595,701.90 that was paid to a company controlled by his son-in-law. Petitioner's characterization notwithstanding, the forfeiture order against him was not based on a theory of "vicarious" or joint and several liability. Rather, the district court found that the payments to the company controlled by Pilotto's son-in-law were kickbacks that were made for the use and benefit of Pilotto and at his direction (13 R. 3581-3582). Thus, the court found that Pilotto directed the payments to be made and that he was the recipient of those payments.